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ABSTRACT

As part of a discussion of academic planning for the future decades, a proposition is offered that there is little likelihood that any good ideas advanced at the conference can be adopted, and bad changes will be made, unless ways are developed for higher education professionals to approach each other more effectively. An example is cited from personal experience with writing guidelines for nondiscriminatory testing procedures for employment, promotion, and other personnel decisions. Difficulties arising from cooperative efforts among government agencies and universities are described. The guidelines themselves, testing procedures, jargon, and backgrounds of individuals involved are all problem areas. A major problem is each side understanding the other's position. Consideration is given to civil and human rights, contract negotiations, faculty promotions, reporting requirements, equal pay for equal work, rigid regulations, grievances, and arbitration. It is concluded that the proper conduct of colleges and universities must rest in the hands of those trained and experienced in the work, not by the untrained in federal agencies nor by those in colleges whose training and apprenticeship are not educational. (LBH)

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TIME FOR THE HOUYHNHNMS:

Personnel Policies and Government Controls

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U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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You have now spent nearly two full days talking about academic planning for the eighties and nineties, and in this session we're supposed to be talking about "Policy Planning and Alternatives," as if what we discuss this afternoon might some day really become new policies and practices. The proposition I wish to introduce for your consideration is that there is little likelihood that any good idea we have had here can be adopted, and there is every likelihood that the changes that are made will be bad, unless we in higher education and others outside it change the ways we approach each other.

An example will help explain my position. In 1972, the Equal Employment Opportunity Coordinating Council (EEOCC) of the federal government set out to write a uniform set of guidelines for nondiscriminatory testing procedures for employment, promotion, and other personnel decisions. The third draft of these guidelines is now being circulated to state and municipal governments and industry for comment,[1] but only over the objection of the Equal Employment Opportunity Commission, one of the five member agencies of the EEOCC, which finds many faults in the current draft. The new guidelines have also been attacked by the Legal Defense Fund of the NAACP for watering down the original EEOC guidelines, which were more uncompromising than the current set but possibly also in part unconstitutional and unworkable. In my own office, with considerable help -- I have reviewed the last two drafts, and the American Council on Education has submitted an unfavorable commentary on the first draft. Next Monday and Tuesday, at Northwestern University, there will be an expensive workshop sponsored by the Graduate School of Management to bring together government, business and industry employers with those framing the guidelines.[2] I suggest that the workshop will clear up only a few relatively small matters and will have a very hard time even considering the important ones.

The important ones are not very complicated. First, the guidelines are based on two publications of the American Psychological Association, Standards for Educational and Psychological Tests (1974), and Principles for the Validation and Use of Personnel Selection Procedures (1975), neither of which, if we can believe psychologists, is yet ready to be the basis of a comprehensive, nationwide scheme for the validation of testing procedures for all hiring, promotion, and other employment actions.[3] The publications are, rather, a set of sometimes frankly experimental stabs at a difficult bunch of theoretical and practical questions. Thus, the testing guidelines are based in part on just the kind of unvalidated methods they are supposed to eliminate in employment. The situation is something like that of the premature attempts of some state legislatures to mandate the use of the techniques being developed by the National Center for Higher Education Management Systems (NCHEMS) before they had been given even the most rudimentary preliminary testing.

The second difficulty with the guidelines is that they are -- even in the third draft -- so beset with jargon that the ordinary intelligent reader is likely to be too baffled by them to carry them out. In particular, they fail to say in simple language just which employees must be covered. In the third draft, there is some indication that faculty positions might be excluded from the test validation requirement because there are not enough incumbents in each type of job to make the required validations feasible. If this is the case, a straightforward statement to that effect might have been made. But this brings me to the fourth, and by far the most important objection: the guidelines weasel on such matters because the drafters have been unable politically to resolve their

own conflicting views. The validation procedures cannot, I am assured, be applied to faculty jobs in any but the very largest departments in the largest universities, and even then not to all jobs in those departments. But it is not politically advantageous for the EEOCC to say so. To exempt the faculty jobs in a clear statement would be to admit that there is as yet no good substitute for the combinations of information gathering, standard setting, and peer review which have been the basis for faculty personnel decisions in the past. Above all, a regulatory body cannot afford to admit that it is unable to find a novel regulatory mechanism for what a legislative body has said it shall regulate, and like the emperor's tailors, the framers of the EEOCC guidelines count on a period of grace before some uncomfortable youth in the front row says out loud that the emperor has no clothes.

You may have noticed my claim that the fault is not with me but with others. This approach to current conflicts seems to characterize virtually everyone who speaks, whether it's the black male nontenured teacher at CUNY claiming that his nonreappointment during a time of retrenchment is part of a plot to get rid of all the blacks recently appointed under affirmative action;[4] or a woman who embroils a university with a state human rights agency because the institution did not give her a nonexistent job she applied for;[5] or a Wage and Hour administrator who says, "All your promotion and tenure procedures must be faulty because all our college and university plaintiffs are complaining about such procedures";[6] or the university president who concludes that federal regulation and the litigiousness of everyone in sight has finally tied him down, as Gulliver was tied down by the multiple miniscule lashings of a horde of Lilliputians.[7] None of those speaking admits to any fault.

And I will be no exception. I doubt very much if you have any particular interest in my background, but it is similar to the backgrounds of many of the people who have worked in colleges and universities in the past forty years, particularly those now over forty-five. We share some characteristics: a feeling that on the whole we've done a pretty good job of shepherding colleges and universities from a period of stability through an enormous expansion resulting from the post-war baby boom and the educational mandates of federal and state lawgivers, then through a period of student disruption parallel to other social upheavals, and into a period of retrenchment, with a few special aberrations like McCarthyism and the Vietnam war along the way. Among other things we have, since the initial AAUP work in 1925, enormously improved faculty employment conditions and increased faculty participation in governance, often against great odds. The peer-review system, unlike appointment-and-promotion systems based on seniority or other criteria of allegedly similar objectivity, was designed to include the need for fairness and the institution's need for quality in a system offering the faculty member a necessary measure of job security. It has taken nearly half a century to bring the system to its present state of refinement, if not perfection, and I for one am proud of it. The system and its results have played no small part in making college teaching and administration the attractive jobs they have been, so that even in hard times like the present there is considerable competition for them.

It is not surprising, therefore, that as the civil rights and individual rights movements of the sixties gathered steam, one of the targets would be the employment -- and later the educational -- opportunities in colleges and universities, and that those practices which served as barriers to the employment or promotion of minorities and women would come under severe scrutiny. It was a time when the predominantly

white male senior faculty members and administrators who had been principally instrumental in making college employment attractive had to face a period -- quite long for some -- of painful consciousness-raising. I was reminded of this the other night watching the first episode of the current Upstairs Downstairs series on TV, in which at the start of World War I the wealthy Bellamys take a refugee farm family from Belgium into their London home. The Belgians speak no English, and the Bellamys and their servants have little or no French. Relations between hosts and guests start badly and get far worse. Whichever group the viewer identifies with, he is dismayed. After many days, when the situation has become a crisis, the Bellamys' niece Georgina returns from a country party. She can speak French and understands something of the Belgian culture. With Georgina simply translating questions and answers accurately, within a few highly charged minutes, the misunderstandings that beset the relationships are revealed and a new and sympathetic basis is established.

What occurred with the Bellamys in a matter of days, moving from unawareness to crisis and finally awareness and accommodation based on accurate statements and a willingness to understand, appears not to have happened satisfactorily in higher education even after nearly a decade of trying. It must sometimes appear to an outsider -- to maintain the Upstairs Downstairs image for a moment longer -- that the Belgians had called in some Hungarian policemen speaking neither French nor English to make and enforce demands upon the Bellamys.

That's probably carrying the matter much too far, but you may have noticed the spate of recent comments, many but not all of them from higher education, about the increasingly baleful effects of governmental regulation and "big government." Most commentators, like Warren Bennis, George Bonham, Kingman

Brewster, Stephen Horn, and Earl Cheit, detail the steps that have led to the administrators' sense of having been paralyzed by a mass of small strings, or as Bennis puts it, tied down by Lilliputians.[8] It is my very strong impression that this malaise among administrators is growing, and that it has reached proportions where malaise in itself is a factor of some significance when anyone is considering the likelihood of adopting policy alternatives, as we are supposed to be doing here.

Over the past ten years, I've become a little gun-shy of trying to interpret the feelings of others, but I can say that the evidence I see indicates that the administrators are not alone, and that representatives of professional women and minorities, and representatives of governmental agencies mandated but as yet unable to enforce the laws, are not happy either. I detect no particular joy at the evident and public discomfiture of the administrators, which would be expected and justified if the other groups honestly felt that the administrators were the sole problem. They could say, "We have them on the run. Let's have a day of celebration and then institute our measures which will bring the milennium." There is no cheering, I think, because we all know in our hearts that the issues we are dealing with are really intractable and are not going to be resolved either quickly or by the waving of a magic wand. Unfortunately, as long as they are unresolved they encourage on all sides the emergence of demagogues, hustlers, obfuscators, blackmailers, hijackers, vandals, and an assortment of other self-servers whose depredations have already delayed or prevented progress on the issues.

I'm not at all sure that we can get out of this situation in my professional lifetime, but I think it's worth at least one more try. We're beyond the point where Georgina alone can help us, though we still need accurate translation when in fact we are speaking different languages. But I must turn to Gulliver's

Travels again for another paradigm which, incidentally, also explains the title of this paper, Time for the Houyhnhnms. Gulliver's first voyage was to the Lilliputians. On his fourth and last voyage, he was stranded in a land inhabited by horrible man-like creatures called Yahoos and by beautiful horses called Houyhnhnms. Gulliver tells us that the Houyhnhnms, who rule the country, lead a very simple, superior life based on reason, truth, friendship, and benevolence. Despite their recognition that Gulliver is a Yahoo, they see something admirable in his readiness to learn their language, his ability to reason, and his desire for virtue, so they are willing to become his teachers. When he reluctantly returns to England after three years, he can barely abide his family and refuses to see his neighbors. This is not because Gulliver thinks he is superior to them; in fact, Swift stresses that Gulliver's despair arises from the extent to which he fails to reform himself, much less to reform others.

The basis of the Houyhnhnms' way of thinking is their view of the purpose of speech. On this subject, Gulliver's teacher argues as follows:

> ...that the use of speech was to make us understand one another, and to receive information of facts; now if any one said the thing which was not, these ends were defeated; because I cannot properly be said to understand him; and I am so far from receiving information, that he leaves me worse than in ignorance, for I am led to believe a thing black when it is white, and short when it is long.[9]

With this guide, I suggest that if we are to come out of the impasses and in some cases pure idiocies to which our regulatory binge is leading us, and are to come out with our persons and our institutions reasonably intact, we must start talking straight, answering legitimate questions honestly, admitting where we

don't have the answers, and -- because we're talking about higher education -- being prepared to keep educational effectiveness as an important criterion even when other criteria important to us are in the equation. I'd also suggest that we follow the advice of one of my teachers who said, "Maintain an open mind, but don't have a mind so open your brains fall out."

For this Houyhnhnm-like scheme to work, someone has to start, and I propose in the time remaining to me to make some personal observations on certain of the issues raised by federal regulation. I hope of course that you will agree completely with what I say; but if you don't, I hope that you will try hard to state your views accurately, with as little rancor as possible, and with the purpose of reaching an accommodation.

So, to return to the EEOCC Guidelines for Testing, I would like a straight and informed answer from psychologists on whose work the Guidelines are based about the feasibility of applying the Guidelines to the various aspects of university employment, and what in their view should be exempted from the authority of the Guidelines. If, as I suspect they will, they say that most faculty and much professional employment should be exempted from these particular validation prescriptions, I would be immensely glad if the EEOCC would agree and make the exemption. I would then hope that the Legal Defense Fund of the NAACP and similar groups would not castigate the EEOCC for "weakening" some important position or abandoning an important principle, but instead would help to find another method to improve further the tried and tested, if not perfect, employment procedures we now have.

Moving on from the testing, I'd like to say something more about the peer-review system. In its best form, it provides that the person under review for appointment or promotion or tenure be notified that the review is to take place,

be given a statement of the criteria to be employed in the decision, and be given opportunity to provide information pertinent to the decision. It also provides for judgment by persons qualified to consider the various aspects of performance and promise that go into academic jobs, the scholarly aspects as well as those relating to teaching and administration. Although so-called objective measures such as length of service and scores on tests might figure in a decision, they cannot be sole or even principal determinants if a good decision is to be reached. The informed judgment of experienced people is the only satisfactory way for these decisions to be made, and the entire academic community should resist any attempts to change this fundamental principle. When we are ready to replace the work of judges, juries, and physicians, with lotteries or the entrails of chickens, I may back down on peer review for faculty personnel decisions. But not until then.

For the same reasons, we must be alert to the almost automatic attempt of some agencies to impose the "least qualified incumbent" rule on faculty and professional employment. This rule says that you may not establish as a requirement for employment any performance standard higher than that held by the least qualified incumbent. That's one to give you a sleepless hour or two tonight, should you want to think about it.

In early December, an Atlanta newspaper carried an announcement that the Atlanta schools were going to do away with "social promotions" for the pupils. This meant, I was informed, that henceforth students would be promoted from grade to grade on the basis of academic performance. What basis had there previously been? Answer: the need for social recognition, which had been given

priority over academic performance, even in a school. I was told that it took a great deal of courage for the superintendent to take this stand.

I would be tempted to laugh in scorn if I did not know that we have been guilty of something nearly as idiotic in permitting the erosion of the necessary distinctions in contract terminations. The nonrenewal of a temporary contract, whether or not it is probationary, should carry and be permitted to carry no implication of incompetence, even though in some cases a judgment of competence may have entered into the decision not to renew. The termination of a contract for reasons of retrenchment should also be free of any implication of incompetence. In fact, a retrenchment termination should say, "We would continue this person under our regular employment provisions but for the requirements of retrenchment." Only in a termination for cause does the question of competence necessarily arise and such a termination indicates inescapably a judgment of incompetence. The erosion of these distinctions arises from two sources. Some of those in control of personnel decisions have avoided the difficulties of dismissal for incompetence by using retrenchment as a reason, and others have used nonrenewal to rid themselves of competent but uncomfortable faculty members. The other source of the erosion has arisen from faculty members, alone or collectively, claiming virtually absolute protection from layoff or nonrenewal by asserting that termination of all kinds must imply incompetence and that therefore they are entitled to insist that an institution prove their incompetence before they may be terminated. Fortunately, in the most egregious of these cases, courts have refused to go along, but there has been some administrative timidity. This has been considerably increased when necessary or ordinary terminations have been challenged on the grounds that illegal discriminatory forces are at work, or that seniority provisions are

unconstitutional. And there has been little objection as yet to the assertion by AAUP and other national groups that persons terminated for financial exigency or bona fide changes in program are entitled to a good many special advantages in placement, retraining, and time of recall.[10] There is a certain King Canute quality to much of this -- the implication that administrators or outside agencies or courts can, if only they would, meet financial exigency without ever laying off anyone. In any case, the maintenance of the distinctions among the categories of terminations seems to me fundamental to a workable personnel system that would permit an institution to do its educational job.

Let us recognize that resisting such pressures is more difficult today than it was in even the recent past. David Alpern, writing in Newsweek last December on "Big Government,"[11] refers to what Daniel Bell has called a new "revolution of rising entitlements." Alpern describes this as "a shift in national focus from the traditional pursuit of equal opportunity to a new pursuit of equal outcomes and advantages as practically absolute rights of citizenship. These ceaseless demands thus made on government by competing interest groups," says Bell, "now threaten the stability of American society."

Another related matter I think needs special attention and vigilance is the question of penalties. Certainly one reason for the effectiveness of the Wage and Hour Division in settling back pay cases in contrast with the inability of the Office for Civil Rights to settle anything at all, is the difference in the penalties they can impose. Back pay is awarded under rational guidelines and is usually within the institution's ability to pay. But in most institutions the cutting off of federal funds is far too drastic a penalty, and for the federal government something of a suicidal move in that the contracts to be terminated are usually

for services the government wants. On a much smaller scale, however, I believe that we have lived too long without some agreement on what damages should be paid for what kinds of injuries, thus leaving ourselves open to blackmail. Among the horrors are those oddball cases in which an agency or a judge awards tenure to a faculty member ineligible for tenure but nevertheless the victim of some element of sex or race discrimination, or the cases in which an institution is forced to devote huge amounts of money and time defending itself in a nuisance suit it ultimately wins on the merits. This is particularly galling when the suit is carried free for the plaintiff by the staff of a government agency. In both kinds of cases, the penalties are too great. I suggest we consider later what I should demand the next time I'm called a male chauvinist pig. My own recommendation is $50, without tenure, and nothing to lawyers.

Another aspect of regulation is somewhat more difficult to manage and is certainly not confined to regulation related to discrimination: this is the problem of excessive reporting requirements. You may recall that ACE's chief economist did a study of six institutions recently on the costs of federally mandated social programs and discovered, not unexpectedly, that these costs were enormous.[12] They were especially high for the reporting paperwork, the outstanding example of which in the past eight months has been the so-called Berkeley Plan for establishing affirmative action goals and reporting annually on progress toward the goals.

I have several questions about such reporting requirements. The first, of course, has to do with whether it is either fair or economical to demand such data from institutions that have not been proved to have violated a law, or against which an indictment has not been brought. Because of the costs, the requirement in itself amounts to a penalty in advance of a proper decision about guilt. My

second objection is that the statistics collected under these requirements feed a Catch 22 situation, as follows. The institution is asked to count the numbers of women and minorities in each department or division, then to estimate how many persons with the requisite training are available for the department's positions. Then if there is a discrepancy (called underutilization) between the number on hand and the number that theoretically are available, the institution must set a goal of reducing and eliminating the discrepancy within a defined period in the future.

I've rewritten that paragraph four times, and it still doesn't come out right. I believe now the reason is that the statistical scheme for solving employment discrimination is like schemes for improvements reported by Gulliver from his third voyage. In the land of Lagado, Gulliver is entertained by a great lord, Munodi. Gulliver is puzzled that most of Lagado, though not Munodi's estate, is run down and barely surviving. Referring to the airborne island, Laputa, in which the study of mathematics and music occupies the minds of most of the inhabitants to the exclusion of all practical matters, Munodi reports

> That about forty years ago certain persons went up to Laputa, either upon business or diversion, and after five months continuance came back with a very little smattering in mathematics, but full of volatile spirits acquired in that airy region. That these persons upon their return began to dislike the management of every thing below, and fell into schemes of putting all arts, sciences, languages, and mechanics upon a new foot. To this end they procured a royal patent for erecting an Academy of Projectors in Lagado; and the humour prevailed so strongly among the people, that there is not a town of

> any consequence in the kingdom without such an academy. In these colleges the professors contrive new rules and methods of agriculture and building, and new instruments and tools for all trades and manufactures, whereby, as they undertake, one man shall do the work of ten; a palace may be built in a week, of materials so durable as to last for ever without repairing. All the fruits of the earth shall come to maturity at whatever season we think fit to choose, and increase an hundred fold more than they do at present, with innumerable other happy proposals.

I pause in this account to suggest the promises of the administrators of our federal agencies. Munodi continues:

> ...the only inconvenience is, that none of these projects are yet brought to perfection, and in the mean time, the whole country lies miserably waste, the houses in ruins, and the people without food or clothes. By all which, instead of being discouraged, they are fifty times more violently bent upon prosecuting their schemes, driven equally on by hope and despair. (pp. 202-203)

Munodi concludes with the note that a few who, like himself, resisted the projectors and maintained the towns and the food supply on their lands "were looked on with an eye of contempt and ill-will, as enemies to art, ignorant, and commonwealth's-men, preferring their own ease and sloth before the general improvement of their country."

The surprising contemporaneity of Swift's views is reflected in a Wall Street Journal editorial from last fall which begins:

> The only argument for a federal bailout of New York City that makes any sense at all to us is one that is never made by the city's intellectual and political elite. That is, for the past generation, New York City has been the main laboratory for the nation's social engineers, and has been wrecked in the process. The federal government should at least pay for the breakage and promise to never experiment with New York again.[13]

Why has the wasting and wasteful nonsense of the statistical requirements not led to their modification or replacement? It's not popular to say so, but it's because the requirements are crudely effective in driving institutions to make strenuous efforts they might not otherwise make to hire minorities and women. To avoid the Catch 22 situation of endless litigation and hearings and resubmissions of yet more data and the filing and counterfiling of suits -- all of this based on essentially meaningless data -- an institution will go out of its way to hire the groups statistically identified as underrepresented. The pressure to do this will remain, because the statistics will always be unsatisfactory, until the supply in some fields is increased. Many institutions are thus destined for a long period of apparent noncompliance, and therefore a continued affirmative effort on behalf of women and minorities.

I don't object at all to the effort, and I applaud the results when good appointments are satisfactorily made. But for how long are we going to pretend that the statistics have any particular validity as evidence? For how long are we going to put up with harassment and law suits brought on the basis of these statistics? For how long are we going to spend massive amounts of money and time gathering them? Would not the money be better spent in training or employing women

and minorities? I don't have the answer to these questions. But they boil down to this: is there no saner, less wasteful, and just as effective method of ensuring appropriate institutional effort than this paper game?

We need also to ask some questions about governmental guidelines. Strict guidelines -- i.e., rigid regulations -- have the advantage that those who must comply at least know what they have to do, and presumably so do the regulators, with the result that one can comply with the law using a set of mutually understood rules. On the other hand, I observe that few rules affecting personnel decisions are generally applicable across all colleges and universities, to say nothing of their applicability to education and industry equally, and therefore I have found myself arguing that wherever possible the principles of a legal mandate should be translated into institutional practices by the institution itself and not be prescribed by the government -- or even by the American Council on Education.

A case in point is the question of what constitutes equal pay for equal work in the eyes of the enforcers of the Equal Pay Act in the Department of Labor. For some time, having suggested some principles to be incorporated, we have been waiting for guidelines promised by the Department of Labor. Yet a communication from an official of the Department commenting last July on a draft article by one of Labor's critics, said in part: "...the Department agrees with you that no one formula can be used in determining whether or not there are equal pay violations and, if so, the extent of those violations and the changes required to correct those violations. For this reason, we are not at all convinced that 'guidelines' would be useful since no hard and fast rules can be established."

So far, I find that this statement appeals to my desire to keep the possibilities open. But the next sentence gives me pause: "Moreover, the Act's requirement -- viz., that pay distinctions based on sex be eliminated -- is sufficiently clear that universities and colleges can comply without the prior issuance of guidelines." That sentence has the ring of the truism. But if the crystal clarity of the act is so obvious, why is it that there is so much confusion over its meaning when a specific complaint is being considered simultaneously on a campus and by the Wage and Hour Division? Again, I have no answer, but I think we ought to start by acknowledging the problem.

Those of you who have followed the development of guidelines, have talked with those who have been directly involved in the agencies, and have read the testimony at congressional hearings on them are aware that between the legislation and the final guidelines there is often a struggle in the agency itself between those who are trying to impose the minimum regulation consistent with clear legislative intent and those who see the drafting of guidelines as an opportunity to extend the legislative mandate to include special goals of their own. Some of these are cut back during the procedures required to establish guidelines. Others -- like the EEOC mandate on equal monthly pension benefits for women and men -- raise issues still unresolved.

The last matter I'd like to mention is one on which I think progress has been made but about which I'm still not quite clear. You may recall that in the original draft of the first guideline for the enforcement of Executive Order 11246 in colleges there was a requirement that institutions covered by the order have grievance procedures, and there was, in fact, an attempt by the government drafters to spell out the procedures. Before the publication of the guidelines in October 1972, the requirement had become a brief recommendation because, I'm told, there

wasn't agreement in the government on what the provisions for a grievance procedure should be. Then in 1974, when an early draft of the Title IX Guidelines was sent to the White House, there was a requirement that there be grievance procedures for employees and students, and the suggestion that the Office for Civil Rights would defer to these. On the objection of groups claiming that the Office for Civil Rights could not legally defer to the results of campus grievance procedures, this latter provision was dropped in the final guidelines that became effective in July, 1975, though the requirement that there be grievance procedures remained. Believing that suitable grievance procedures for each campus will have to vary according to its circumstances, and therefore happy that Title IX did not prescribe their form, I still hoped that the use of good grievance procedures might preclude the need to retry every case in its entirety in the event of a complaint to OCR. The latest move in this drama is the brief joint statement by Secretary Mathews and immediate-past-Secretary Dunlop on January 2, which speaks in part, of the Title IX provision for grievance procedures and concludes, "Such procedures might involve either binding or advisory arbitration. The findings of arbitrators in these proceedings will be considered by the government in the conduct of its own complaint investigations, compliance reviews, and enforcement measures under Executive Order 11246." [14]

I like this statement, and I think it goes far in the right direction of encouraging institutions to set up good procedures and urging grievants to use them rather than to depend on initial or simultaneous appeals to government agencies. But I hope I will be forgiven for asking an ungrateful question: Do the Secretaries mean that they will consider the results of a campus grievance proceeding only if it has involved binding or advisory arbitration? If that's what they mean, does

this imply that the findings in a case decided by some other method than arbitration will not be considered by the Departments? And if this is what they mean, they appear to me to be short-sighted and to put unwarranted pressure upon institutions to set up grievance procedures which may hasten unnaturally quickly to some form of arbitration. It is not only my own view but also the conclusion of persons who have come at the question of grievances on behalf of grievants, that arbitration (whether binding or advisory) is not a panacea, but rather a device to be used sparingly and with great caution, if at all, in higher education. [15]

It's quite possible that the Secretaries were thinking about a very broad interpretation of "arbitration" that could include, for example, the results of a hearing that involved the plaintiffs' peers. In any case, before we rush to praise or condemn the brief statement of the Secretaries, I think we need a pretty clear understanding of what they had in mind, and that we should be ready with alternative or supplementary suggestions.

I've finished my list for today. I have meant it as a beginning in carrying us from a feeling of helplessness to a stage where we may begin to translate the frustrations of women, minorities, white males, administrators, regulatory agency people, and perhaps even unions (who knows?) into something more than a documented demonstration that we are tied down by Lilliputians. After nearly a decade, it is appalling to observe how large a percentage of our effort on all sides is being given to conflicts based on half truths, irrelevant data, and half-formed theory.

Since my neck is so far out anyway, let me summarize by a final set of assertions. The proper conduct of colleges and universities must rest in the hands of those trained and experienced in the work; the work cannot be done by the untrained in federal agencies nor by those in colleges whose training and apprenticeship are not educational; the basic organization and direction of our personnel

policies and procedures are sound and will, with attention, increase the representation of women and minorities better than any alternative scheme for quick statistical results so far invented.

If you have found what I have taken so long to say simply an account of the obvious, I will be glad, for in those to whom this is obvious lies our strength.

In another section of their January 2 joint memorandum, Secretaries Mathews and Dunlop announced that they were planning to set up advisory groups to the two departments on the enforcement of the Executive Order, Title IX and other laws applicable to higher education. If the resignation of John Dunlop on January 14 doesn't change the game, here is our opportunity. I would propose, were we still in Gulliver's day, that we search the stables for the most intelligent Houhynhnms and beg them to represent us. As it is, we'll have to make do with ourselves, just as Gulliver did in the end, but there's no necessary reason we can't act on the model of the Houyhnhnms.

Footnotes

1. "Uniform Guidelines on Employee Selection Procedures," Multilith, 9/24/75. For a concise account of the history and present status of the Guidelines, see James W. Singer, "Employment Report/Draft of uniform rules on job discrimination circulated," National Journal, 1/10/76, pp. 43-4.

2. Northwestern University News, January 8, 1976.

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